INSAS BERHAD & ANOR.

v.

AYER MOLEK RUBBER COMPANY BERHAD & 10 ORS.

FEDERAL COURT, IPOH
TAN SRI DATO' HJ. MOHD. EUSOFF B. CHIN CJ
DATO' DR. ZAKARIA B. MOHD YATIM JCA
DATO' P. S. GILL J
[CIVIL APPLICATION NO. 08-48 OF 1995]
12 AUGUST 1995

PRACTICE & PROCEDURE: *Appeal - Leave to appeal to Federal Court - High Court granting ex-parte order against respondents - Application to set aside order withdrawn by respondents - Notice of appeal and motion for stay filed in Court of Appeal but motion subsequently withdrawn - Oral application for interim order - Oral application entertained by Court of Appeal despite withdrawal of motion - Whether proper - Whether Court of Appeal already functus officio - Resultant interim order by Court of Appeal - Whether irregular - Leave - Whether to be granted.*

PRACTICE & PROCEDURE: *Appeal - High Court granting ex-parte order against respondents - Application to set aside order withdrawn by respondents - Effect - Whether withdrawal amounted to concession that ex-parte order was properly granted - Appeal to Court of Appeal against ex-parte order - Whether maintainable - Whether substratum for appeal had already collapsed.*

PRACTICE & PROCEDURE: *Proceedings in High Court - Whether to be filed in correct Division of the Court - Writ averred to a cause of action commercial in nature - Appellants filed proceedings in Appellate and Special Powers Division of the High Court - Effect.*

PRACTICE & PROCEDURE: *Adjournment - Order of Court to adjourn a matter - Whether a proper subject for appeal - Whether non-appealable - Rules of the High Court 1980 O. 35 r. 3.*

JURISDICTION: *Court of Appeal - Functions - Whether to exercise only appellate jurisdiction - Original applications - Whether to be made in Court of first instance - Appeal Judges - Passing of disparaging remarks on subordinate Judges and solicitors - Whether improper - Whether to be avoided - Unwarranted remarks by appeal Judges in written judgment - Whether to be expunged - Rules of the Court of Appeal 1994, rr. 14 & 27 - Courts of Judicature Act 1964 ss. 43 & 44.*

The appellants had filed a writ action against the respondents in the High Court and prayed, *inter alia*, for the transfer of certain shares to them. The general indorsed writ, as filed, averred to a cause of action which was commercial in nature, but the appellants, somehow, decided to file the action in that Division of the High Court known as the Appellate and Special Powers Division, and not, as expected, in the Commercial Division. The respondents nevertheless did not object to the choice of Court, and hence the case came to be adjudicated upon by that Division of the High Court.

The appellants subsequently applied to the trial Judge for, and obtained, on 10 April 1995, an *ex-parte* mandatory injunction against the respondents (the *ex-parte* order) ordering, *inter alia,* the transfer of some 540,000 ordinary shares of the first respondent company to the

appellants, to be effected within a certain period. On 12 April 1995 the respondents applied to the Judge to set aside the *ex-parte* order, but hearing of this application, scheduled for 13 April 1995, was on that date adjourned to 27 April 1995. This latter date however was way beyond the period specified for compliance of the *ex-parte* order, and that being the case, the respondents applied to the Court for a stay of the *ex-parte* order pending hearing of their application on 27 April 1995. The application was refused and the result was that, on 14 April 1995, the shares in question were transferred to the appellants as injuncted.

The respondents then filed a notice of appeal to the Court of Appeal against the trial Judge's decision adjourning their application to set aside the *ex-parte* order to 27 April 1995. On the same day they also filed a motion in that Court applying for a stay of the *ex-parte* order pending disposal of their said appeal.

The respondents' application to set aside the *ex-parte* order came before the High Court on 11 May 1995 but on that date Counsel for the respondents informed the Court that he was withdrawing the application. Subsequently, on 24 July 1995, the respondents' application for stay of the *ex-parte* order came before the Court of Appeal for hearing, but this application, likewise, was also withdrawn by the respondents. The withdrawal notwithstanding, the respondents' Counsel, however, applied to the appeal Judges, orally, for an interim injunction to restrain the appellants from the fruits of the *ex-parte* order pending their aforesaid appeal.

The Court of Appeal, having decided to entertain the oral application and having found sufficient merits therefor, made an order in terms of the application and issued the interim order sought for. According to the appeal Judges, the *ex-parte* order, in the terms it was framed and approved, was so manifestly unjust that it justified their interference by way of their inherent powers. The appeal Judges also took issue with the appellants' failure to file the proceedings in the Commercial Division of the High Court, and the subsequent failure of the trial Judge to transfer the proceedings to that Division, and viewed such misfiling as capable of giving the impression that litigants could choose their own Judges to adjudicate their cases. These apart, the learned Judges also expressed displeasure at the appellants' solicitors who, by their conduct and in the words of the learned Judges, "have brought the administration of justice into disrepute among right-thinking people".

The appellants applied to the Federal Court for leave to appeal against the interim order of the Court of Appeal aforesaid. *Inter alia* the appellants argued that the oral application as made by the respondents before the appeal Judges had violated r. 27 of the Rules of the Court of Appeal 1994. The appellants also objected to the derogatory criticism levelled by the appeal Judges against them and the trial Judge and sought for expurgation of the same.

Before the Federal Judges the primary issues that arose were:

1. Whether the respondents, by withdrawing the application to set aside the *ex-parte* order, were deemed to have conceded that the order had been properly issued by the High Court

2. Whether bearing in mind the respondents' withdrawal of the application for stay of the *ex-parte* order, it was still open for the Court of Appeal to have entertained the respondents' oral application.

3. Whether the Court of Appeal, in the circumstances, was already *functus officio*, and therefore the interim order, being improperly granted, was an irregular order.

4. Whether the derogatory remarks as expressed by the appeal Judges in their written judgment were unwarranted and utterly unjustified, and therefore ought to be expunged from the record.

Held:

Per Mohd Eusoff bin Chin CJ (delivering the judgment of the Court):

[1] As the respondents had withdrawn their application to set aside the *ex-parte* order, the respondents are deemed to have conceded that the High Court had rightly granted the said order. That being the case it was not open to the respondents to have proceeded with their appeal against the order of the learned High Court Judge made on 13 April 1995, adjourning the case from 13 April 1995 to 27 April 1995. The foundation and substratum of the appeal had already collapsed.

[2] Since the respondents had in the Court of Appeal withdrawn their application for stay of the *ex-parte* order there was no more application left for the Court of Appeal to deal with, and the oral application therefore should have been dismissed. The Court of Appeal then was already *functus officio* and it was wholly irregular and improper for it to have proceeded on and entertained the oral application, deal with the merits of the case and grant the interim order.

[3] A Court has power to adjourn a hearing as is explicit in O. 35 r. 3 of the RHC 1980. An order of a Judge to adjourn the hearing of a matter before him therefore is not a proper subject for appeal. There was no authority to indicate that such order is subject to appeal and to allow it now would only open a floodgate for appeals against adjournments.

[4] The respondents' contention that the Court of Appeal below, in granting the interim injunction, was acting under its inherent jurisdiction as well as under s. 44 of the Courts of Judicature Act 1964 is without merit. Clearly s. 44 is not applicable here. Also, going by the words of s. 43 of the 1964 Act, and r. 14 of the Rules of the Court of Appeal 1994, it is clear that where an application can be made to either the High Court or the Court of Appeal it shall be made in the first instance to the High Court. Further the Court of Appeal only exercises appellate jurisdiction and hears appeals from orders of the Courts below. It does not and should not deal with original applications.

[5] There was no good and sufficient reason as to why the three Judges of the Court of Appeal should have launched a scathing attack on the High Court Judge for hearing the case, when Counsel for the respondents had not raised any objection to the Judge of the Appellate and Special Powers Division proceeding with the case. The aspersions cast on the professional conduct of the appellants' solicitors were also unwarranted and unjustified. In the circumstances this Court must record its disappointment and displeasure at the conduct of the said appeal Judges for having, without any justification, criticised those who were not given the opportunity to defend themselves. It follows that the following objectional and wholly offensive remarks made against the High Court, the trial Judge and the appellants' solicitors ought to be expunged from the judgment of the Court of Appeal:

But this case is more than that. This is a case about an injustice which has been perpetrated by a Court of law. This is also a case about abuse of the process of the High Court and, therefore, it concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure and in which the Court has a duty to exercise this salutary power.

Although the ex-parte mandatory injunction should not have been granted in the circumstances of this case in the first place, that is not the injustice which is revealed in this case. The injustice is manifest: it is to be seen in the form in which the order is framed, the terms of which pre-empt the defendants from exercising their right to apply to discharge an ex-parte injunction obtained behind the backs of the defendants. Here, the plaintiffs through their legal advisers have abused the process of the High Court by instigating the injustice through misuse of the Court's procedure by manipulating it in such a way that it becomes manifestly unfair to the defendants. By doing what they did, these unethical lawyers have brought the administration of justice into disrepute among right-thinking people.

We do not think we can do better with this censure than to voice the words of Lord Diplock in his judgment in the House of Lords in Hunter v Chief Constable [1982] A.C 529, at 536:

> *My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any Court of Justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the Court has a duty (I disavow the word discretion) to exercise this salutary power.*

The fact that the proceedings were filed in the wrong Division does not render the proceedings to be in any way invalid but may, coupled with other considerations in the present case, give the impression to right-thinking people that litigants can choose the Judge before whom they may wish to appear for their case to be adjudicated upon. This, we consider, may lead to very unhealthy negative thinking and since justice must not only be done but must be seen to be done it is imperative for the trial Judge, upon perusal of the pleadings, to have taken the initiative of transferring the proceedings to the right Division so as to dispel any notion that he is partial to any party.

[6] Good grounds having been shown for the grant of leave, the appellants' application for leave to appeal against the interim injunction ordered by the Court of Appeal herein ought to be, and is hereby, allowed

Per curiam: Judges should refrain from criticising another Court, their brother Judges and lawyers who have no opportunity to correct such injustice caused to them. We also wish to remind Judges and Magistrates that where they find that an advocate handling any matter before them has grossly abused the process of Court or acted in a highly unethical manner, the proper step to be taken is for them to lodge a report with the Legal Profession Disciplinary Board established under s. 99(2) of the Legal Profession Act 1976 which will investigate the complaint and where both the accuser and the accused will be given a fair opportunity to state their cases.

[Leave to appeal granted]

[**Bahasa Malaysia** Translation of Headnote]

AMALAN & PROSEDUR: *Rayuan - Izin untuk merayu kepada Mahkamah Persekutuan - Mahkamah Tinggi memberikan perintah ex-parte terhadap responden - Permohonan untuk mengenepikan telah di tarik-balik oleh responden - Notis rayuan dan usul untuk penggantungan difailkan dalam Mahkamah Rayuan tetapi usul kemudiannya ditarik-balik - Permohonan lisan untuk perintah interim - Permohonan lisan dilayan oleh Mahkamah Rayuan walaupun terdapat penarikan-balik usul - Samada wajar - Samada Mahkamah Rayuan telah pun functus officio - Perintah interim oleh Mahkamah Rayuan - Samada di luar aturan - Kebenaran - Samada harus diberikan.*

AMALAN & PROSEDUR: *Rayuan - Mahkamah Tinggi memberikan perintah ex-parte terhadap responden - Permohonan untuk mengenepikan perintah ditarik-balik oleh responden - Kesan - Samada penarikan-balik membawa kepada konsesi bahawa perintah ex-parte telah diberikan dengan betulnya - Rayuan kepada Mahkamah Rayuan terhadap perintah ex-parte - Samada boleh dikekalkan - Samada asas bagi rayuan telah pun musnah.*

AMALAN & PROSEDUR: *Prosiding-prosiding dalam Mahkamah Tinggi - Samada hendaklah difailkan dalam Bahagian Mahkamah yang betul - Writ menegaskan kepada satu tindakan yang bersifat komersial - Perayu-perayu memfailkan prosiding dalam Bahagian Rayuan dan Kuasa-Kuasa Khas Mahkamah Tinggi - Kesan.*

AMALAN & PROSEDUR: *Penangguhan - Perintah Mahkamah untuk menangguhkan sesuatu perkara - Samada perkara yang wajar untuk rayuan - Samada tidak boleh dirayui - Kaedah-Kaedah Mahkamah Tinggi 1980 A. 35 k. 3.*

BIDANGKUASA: *Mahkamah Rayuan - Fungsi-fungsi - Samada untuk melaksanakan hanya bidang kuasa rayuan - Permohonan-permohonan asal - Samada harus dibuat dalam Mahkamah yang pertama - Hakim-hakim Rayuan - Memberi kata-kata yang mengecil-ngecilkan Hakim-hakim Mahkamah Rendah dan peguamcara-peguamcara - Samada tidak elok - Samada harus dielakkan - Kata-kata yang tidak wajar oleh Hakim rayuan dalam penghakiman bertulis - Samada harus dihapuskan - Kaedah-Kaedah Mahkamah Rayuan 1994, peraturan-peraturan 14 & 27 Akta Mahkamah Kehakiman 1964 s. 43 & 44.*

Perayu-perayu telah memfailkan satu tindakan writ terhadap responden-responden dalam Mahkamah Tinggi dan memohon, antara lainnya, untuk pemindahan saham-saham tertentu kepada mereka. Writ yang diendorskan secara am, sepertimana yang difailkan, menegaskan satu kausa tindakan yang bersifat komersial, tetapi perayu, bagaimanapun, memfailkan tindakan tersebut dalam Bahagian Mahkamah Tinggi yang dikenali sebagai Bahagian Rayuan dan Kuasa-kuasa Khas, dan bukan, sepertimana yang dijangkakan, dalam Bahagian Komersial. Responden namun begitu tidak membantah kepada pilihan Mahkamah tersebut, dan dengan itu kes tersebut dibicarakan oleh Bahagian Mahkamah Tinggi yang terdahulu berkenaan.

Perayu berikutan itu memohon kepada Hakim perbicaraan untuk mendapatkan, dan telah memperolehi, pada 10 April 1995, satu injunksi mandatori *ex-parte* terhadap responden (perintah *ex-parte* tersebut) yang memerintahkan, antara lain, pemindahan 540,000 saham-saham biasa syarikat responden pertama kepada perayu, untuk dikuatkuasakan dalam tempoh yang tertentu. Pada 12 April 1995 responden telah memohon kepada Hakim untuk mengenepikan perintah *ex-parte* tersebut, tetapi perbicaraan permohonan ini, yang dijadualkan pada 3 April 1995, telah pada tarikh tersebut ditangguhkan kepada 27 April 1995. Tarikh terkemudian ini namun begitu adalah jauh melebihi tempoh yang ditetapkan untuk pematuhan perintah *ex-*

parte tersebut, dan dalam keadaan yang demikian, responden telah memohon kepada Mahkamah untuk mendapatkan penggantungan perintah *ex-parte* tersebut sementara menantikan perbicaraan permohonan mereka pada 27 April 1995. Permohonan tersebut telah ditolak dan hasil daripadanya adalah bahawa, pada 12 April 1995, saham-saham yang menjadi persoalan itu telah dipindahkan kepada perayu sepertimana yang diperintahkan.

Responden kemudiannya memfailkan satu notis rayuan kepada Mahkamah Rayuan terhadap keputusan Hakim perbicaraan menangguhkan permohonan mereka untuk mengenepikan perintah *ex-parte* tersebut kepada 27 April 1995. Pada hari yang sama mereka juga memfailkan satu usul dalam Mahkamah itu, memohon untuk satu penggantungan perintah *ex-parte* tersebut sementara menantikan penyelesaian rayuan mereka itu.

Permohonan responden untuk mengenepikan perintah *ex-parte* tersebut tiba untuk perbicaraan di hadapan Mahkamah Tinggi pada 11 May 1995 tetapi pada hari itu Peguam responden telah memaklumkan kepada Mahkamah bahawa beliau menarik-balik permohonan tersebut. Berikutan itu, pada 24 Julai 1995 permohonan responden untuk penggantungan perintah *ex-parte* tersebut tiba di hadapan Mahkamah Rayuan untuk perbicaraan, tetapi permohonan ini, telah juga ditarik-balik oleh responden. Tanpa menghiraukan penarikan-balik tersebut, Peguam responden, bagaimanapun, telah memohon kepada Hakim-Hakim Rayuan, secara lisan, untuk mendapatkan satu injunksi interim bagi menghalang perayu daripada menikmati hasil-hasil perintah *ex-parte* tersebut, sementara menantikan penyelesaian rayuan mereka di atas.

Mahkamah Rayuan, setelah membuat keputusan untuk menerima permohonan lisan tersebut dan setelah mendapati merit yang mencukupi baginya, membuat perintah sepertimana permohonan, dan mengeluarkan perintah interim yang dipohon itu. Menurut Hakim-Hakim rayuan, perintah *ex-parte* itu, dalam terma ianya dirangka dan diluluskan, adalah secara manifesnya amat tidak adil sehingga mewajarkan campur-tangan mereka melalui kuasa-kuasa sedia ada mereka. Hakim-Hakim rayuan juga mengambil isu terhadap kegagalan perayu untuk memfailkan prosiding dalam Bahagian Komersial Mahkamah Tinggi, serta kegagalan Hakim perbicaraan untuk memindahkan prosiding tersebut kepada Bahagian itu, dan memandang pemfailan salah sedemikian sebagai mampu memberi tanggapan bahawa litigan-litigan boleh memilih Hakim-Hakim mereka untuk menghakimi kes-kes mereka. Hakim rayuan yang bijaksana juga menyatakan rasa tidak senang mereka terhadap peguamcara perayu yang mana, melalui kelakuan mereka dan dalam kata-kata Hakim Rayuan. *"telah mencemarkan nama baik pentadbiran keadilan di kalangan orang-orang yang berfikiran waras"*.

Perayu memohon kepada Mahkamah Persekutuan untuk kebenaran bagi merayu terhadap perintah interim Mahkamah Rayuan yang tersebut di atas. Antara lainnya, perayu berhujah bahawa permohonan lisan berkenaan, sepertimana yang dibuat oleh responden di hadapan Hakim-Hakim rayuan, telah melanggari k. 27 Kaedah-kaedah Mahkamah Rayuan 1994. Perayu juga membantah kritikan menghina yang diluahkan oleh Hakim-Hakim rayuan terhadap mereka serta Hakim perbicaraan dan memohon supaya kritikan tersebut ditapiskan.

Di hadapan Hakim Persekutuan isu utama yang terbit ialah:

1. Samada responden, dengan menarik-balik permohonan untuk penggantungan perintah *ex-parte* tersebut, dianggap sebagai telah mengalah bahawa perintah tersebut telah dikeluarkan dengan cara yang betul oleh Mahkamah Tinggi.

2. Samada mengambil kira penarikan-balik permohonan oleh responden bagi penggantungan perintah *ex-parte* tersebut, ianya masih terbuka bagi Mahkamah Rayuan untuk melayan permohonan lisan responden.

3. Samada Mahkamah Rayuan, dalam keadaan di sini, telah pun *functus officio*, dan dengan itu perintah interim tersebut, setelah diberikan dengan cara yang tidak betul, adalah satu perintah yang di luar aturan.

4. Samada kenyataan-kenyataan yang menghina oleh Hakim-Hakim perbicaraan dalam penghakiman bertulis mereka tidak wajar dan dengan itu harus dihapuskan daripada rekod.

Diputuskan:

Oleh Mohd Eusoff bin Chin, KHN (menyampaikan penghakiman Mahkamah):

[1] Oleh kerana responden telah menarik-balik permohonan mereka untuk mengenepikan perintah *ex-parte* tersebut, responden adalah dianggap mengakui bahawa Mahkamah Tinggi telah memberikan perintah tersebut dengan betulnya. Oleh hal yang demikian ianya tidak terbuka kepada responden untuk meneruskan rayuan mereka terhadap perintah Hakim Mahkamah Tinggi yang bijaksana yang dibuat pada 13 April 1995 menangguhkan kes tersebut dari 13 April 1995 kepada 27 April 1995. Asas rayuan tersebut telah pun musnah.

[2] Oleh kerana responden dalam Mahkamah Rayuan telah menarik-balik permohonan mereka untuk penggantungan perintah *ex-parte* tersebut maka tidak terdapat lagi permohonan untuk diuruskan oleh Mahkamah Rayuan, dan permohonan lisan tersebut dengan itu haruslah ditolak. Mahkamah Rayuan ketika itu telah pun *functus officio* dan adalah tidak wajar dan di luar aturan baginya meneruskan dan melayan permohonan lisan itu, berurusan dengan merit-merit kes tersebut dan memberikan perintah interim.

[3] Sesebuah Mahkamah mempunyai kuasa untuk menangguhkan sesuatu perbicaraan sepertimana yang dijelaskan dalam A. 35 k. 3 Kaedah-Kaedah Mahkamah Tinggi 1980. Sesuatu perintah Hakim untuk menangguhkan perbicaraan sesuatu perkara di hadapannya dengan itu bukannya satu hal yang wajar untuk rayuan. Tidak terdapat autoriti bagi menunjukkan bahawa perintah sedemikian adalah tertakluk kepada rayuan dan membenarkannya kini akan hanya menyebabkan kebanjiran rayuan-rayuan terhadap penangguhan.

[4] Penegasan responden bahawa Mahkamah Rayuan di bawah, dalam memberikan injunksi interim, telah bertindak di bawah bidang kuasa sedia adanya dan juga di bawah s. 44 Akta Mahkamah Kehakiman 1964 adalah tidak bermerit. Secara jelasnya s. 44 tidak terpakai di sini. Juga menurut perkataan s. 43 Akta 1964 dan k. 14 Kaedah-Kaedah Mahkamah Rayuan 1994, ianya jelas bahawa di mana sesuatu permohonan boleh dibuat kepada samada Mahkamah Tinggi atau Mahkamah Rayuan ianya harus dibuat pada mulanya kepada Mahkamah Tinggi. Mahkamah Rayuan hanya melaksanakan bidangkuasa rayuan dan mendengar daripada perintah-perintah Mahkamah di bawah. Ianya tidak dan tidak seharusnya berurusan dengan permohonan-permohonan asal.

[5] Tidak terdapat alasan yang baik dan memadai mengapa ketiga-tiga Hakim Mahkamah Rayuan seharusnya melancarkan teguran yang pedas kepada Hakim Mahkamah Tinggi kerana mendengar kes tersebut, sedangkan Peguam bagi pihak responden tidak membangkitkan apa-apa bantahan terhadap Hakim Bahagian Rayuan dan Kuasa-Kuasa Khas tersebut meneruskan kes berkenaan. Celaan yang dibuat terhadap kelakuan profesional peguamcara-peguamcara perayu adalah juga tidak wajar. Dalam keadaan yang sedemikian, Mahkamah ini mestilah merakamkan rasa tidak senang dan kecewa atas kelakuan Hakim-Hakim rayuan tersebut kerana, tanpa apa-apa alasan yang kukuh, telah mengkritik mereka-mereka yang tidak berpeluang untuk membela diri mereka. Ianya mengikut bahawa kenyataan-kenyataan cemar dan menghina berikut yang dibuat terhadap Mahkamah Tinggi, Hakim perbicaraan dan peguamcara-peguamcara perayu perlu dikeluarkan daripada penghakiman Mahkamah Rayuan.

Tetapi kes ini adalah lebih daripada itu. Ini adalah kes mengenai ketidak-adilan yang telah dilakukan oleh sebuah Mahkamah undang-undang. Ini adalah juga satu kes mengenai penyalahgunaan proses Mahkamah Tinggi dan, dengan itu ianya mengenai kuasa-kuasa sedia ada yang harus di miliki oleh mana-mana Mahkamah Keadilan bagi mencegah penyalahgunaan prosedurnya dan di mana Mahkamah berkenaan mempunyai kewajipan untuk melaksanakan kuasa-kuasa berguna ini.

Walaupun injunksi mandatori ex-parte tersebut seharusnya tidak diberikan pada mulanya dalam keadaan kes ini, itu bukanlah ketidakadilan yang didedahkan dalam kes ini. Ketidakadilan tersebut adalah manifes: ianya boleh dilihat dalam bentuk perintah tersebut dirangka, yang mana terma-termanya menghalang defendan daripada melaksanakan hak-hak mereka untuk memohon melepaskan satu injunksi ex-parte yang diperolehi tanpa pengetahuan defendan tersebut. Di sini, plaintif melalui penasihat undang-undang mereka telah menyalahgunakan proses Mahkamah Tinggi dengan memulakan ketidakadilan tersebut melalui penyalahgunaan prosedur Mahkamah dengan cara memanipulasikannya hinggakan ianya menjadi tidak adil secara manifesnya kepada defendan tersebut. Dengan melakukan apa yang telah mereka lakukan, Peguam-Peguam yang tidak beretika ini telah menyebabkan nama baik pentadbiran keadilan menjadi tercemar di kalangan orang-orang yang berfikiran waras.

Kami tidak fikir bahawa kami boleh menuturkan kritikan ini dengan lebih tepat selain dari meyuarakan kata-kata Lord Diplock dalam penghakimannya di House of Lords dalam kes Hunter lwn. Chief Constable (1982) A.C. 529, di muka surat 536:

> *Yang Arif, ini adalah kes mengenai penyalahgunaan proses Mahkamah Tinggi. Ianya berkaitan kuasa-kuasa sedia-ada yang mesti dimiliki oleh mana-mana Mahkamah Keadilan untuk mencegah penyalahgunaan prosedurnya menurut cara, yang walaupun bukanlah tidak konsisten dengan pemakaian secara literal kaedah prosedur tersebut, tetapi secara manifesnya adalah tidak adil kepada sesuatu pihak dalam perbicaraan di hadapannya, atau sebaliknya akan mencemar nama baik pentadbiran keadilan dikalangan orang-orang yang berfikiran waras. Keadaan-keadaan dalam mana penyalahgunaan proses boleh terbit adalah berbagai; keadaan yang membangkitkan isu rayuan semasa ini tentunya unik. Ianya adalah tidak wajar, menurut pandangan saya, jika Dewan ini menggunakan peluang ini untuk mengatakan sesuatu yang mungkin dianggap sebagai menghadkan kategori jenis-jenis keadaan dalam mana Mahkamah mempunyai kewajipan (saya melucutkan perkataan budibicara) untuk melaksanakan kuasa yang berguna ini.*

Hakikat bahawa prosiding di sini telah difailkan dalam Bahagian yang salah tidak menjadikan prosiding tersebut tidak sah, tetapi dicampur dengan perkara-perkara lain dalam kes semasa ini, boleh memberikan tanggapan kepada orang-orang yang berfikiran waras bahawa litigan-litigan boleh memilih Hakim di hadapan siapa mereka berharap untuk hadir bagi menghakimi kes mereka. Ini kami anggapkan membawa kepada daya pemikiran yang tidak sihat, dan oleh kerana keadilan bukan sahaja harus dilakukan tetapi mestilah dilihat sebagai telah dilakukan ianya adalah mustahak bagi Hakim perbicaraan, setelah meneliti pliding-pliding tersebut, mengambil daya usaha memindahkan prosiding berkenaan kepada Bahagian yang betul agar dapat menolak apa-apa tanggapan bahawa beliau memihak kepada mana-mana pihak.

[6] Alasan-alasan yang baik telah ditunjukkan untuk pemberian izin, permohonan perayu untuk kebenaran bagi merayu terhadap injunksi interim yang diperintahkan oleh Mahkamah Rayuan di sini seharusnya dan adalah dengan ini diberikan.

Per curiam:

Hakim-Hakim seharusnya menahan diri daripada mengkritik Mahkamah yang lain, Hakim-Hakim sejawatan mereka dan Peguam-Peguam yang tidak berpeluang untuk memperbetulkan ketidak-adilan sedemikian yang disebabkan kepada mereka. Kami juga ingin mengingatkan Hakim-Hakim serta Majistret-Majistret bahawa di mana mereka dapati bahawa seseorang Peguambela yang mengendalikan mana-mana perkara dihadapan mereka telah secara melampaunya menyalahgunakan proses Mahkamah atau bertindak dengan cara yang amat tidak beretika, langkah-langkah wajar yang harus diambil oleh mereka ialah melaporkannya dengan Lembaga Tatatertib Profesyen Undang-undang yang ditubuhkan di bawah Akta Profesyen Undang-Undang 1976 yang akan menyiasat aduan tersebut dan di mana kedua-dua orang yang membuat tuduhan dan orang yang tertuduh akan diberi peluang yang adil untuk menyatakan kes mereka.

[Izin untuk merayu diberikan]

Cases referred to:
State of Uttar Pradesh v. Mohd Naim [1964] AIR (SC) 703 ***(foll)***
Singer Sewing Machine v. Jeremiah [1972] 2 MLJ 56 ***(refd)***
A.M. Mathur v. Pramod Kumar Gupta & Ors. [1990] 2 SCC 533 ***(foll)***
State of M.P. & Ors. v. Nandlal & Ors. [1986] 4 SCC 566 ***(foll)***
V. Sujatha v. State of Kerala [1994] Supp. (3) SCC 437 ***(refd)***

Legislation referred to:
Courts of Judicature Act, 1964, ss. 43, 44
Legal Profession Act 1976, s. 99(2)
Rules of the Court of Appeal, 1994, rr. 14, 27
Rules of the High Court 1980, O. 35 r. 3

Other sources referred to:
Halsbury's Laws of England, 4th Edn., para 84

For the appellants - Dato' V.K. Lingam (S. Sivaparanjothi & Adam Bachek with him); M/s. V. K. Lingam & Co.
For the respondents - Loh Siew Cheang (Loo Foong Meng, Ranjit Singh & Evelyn Khoo with him); M/s. Cheang & Ariff.

JUDGMENT

Mohd. Eusoff b. Chin CJ:
On 1 August 1995 we granted the applicants Insas Berhad and Megapolitan Nominees Sdn. Bhd. leave to appeal to the Federal Court against the order of the Court of Appeal given on 26 July 1995 which granted an interlocutory injunction to the respondents restraining the applicants from exercising or enjoying rights including disposing off the shares whether directly or indirectly pending the disposing of an appeal before the Court of Appeal. We also granted a stay of execution of the order of the Court of Appeal and gave the applicants two weeks to file a notice of appeal to the Federal Court.

The factual background of the case is as follows:

(1) On 10 April 1995, the plaintiffs (applicants) applied for and was granted an *ex-parte* mandatory injunction by the High Court. This injunction compelled the 11th defendant who is the share registrar of Ayer Molek Rubber Company Berhad (the company) to process the plaintiffs' 540,000 shares within 2 working days and the managing director and secretaries of the company were ordered to issue within 2 working days 5 new share certificates in the name of the plaintiffs, and the other defendants were restrained

from interfering, interrupting or causing any hindrance in any manner whatsoever in the registration of the shares.

(2) On 11 April 1995 the injunction order was served on most of the defendants.

(3) On 12 April 1995 the defendants filed an *ex-parte* summons-in-chambers to set aside the *ex-parte* injunction granted.

(4) On 13 April 1995 this *ex-parte* summons-in-chambers was made *inter-partes* and it was served on the plaintiffs' solicitors at 12.00 noon. It was heard by the learned Judge at 2.00 p.m. on the same day.

The plaintiffs' Counsel requested for an adjournment to enable them sufficient time to file an affidavit-in-reply because the defendants' affidavit had been served on the plaintiffs' solicitors only at 12.00 noon that day. The Judge after hearing arguments from both parties, adjourned the *inter-partes* hearing to 27 April 1995 for him to make a decision, as that was the earliest date available, whereupon the defendants' solicitors applied for a stay of the mandatory injunction pending the hearing of their application on 27 April 1995, but the Judge refused to grant the stay.

(5) On 14 April 1995 the defendants made an application to the learned President of the Court of Appeal for a stay of the High Court order pending the hearing of their motion for stay in the Court of Appeal. The learned President did not grant the stay.

(6) Meanwhile on the same day, (14 April 1995) the shares were registered into the names of the plaintiffs in compliance with the order of, the High Court.

(7) On 18 April 1995, the defendants filed a notice of appeal to the Court of Appeal against the decision of the learned Judge of the High Court adjourning the hearing of the defendants' application from 13 April 1995 to 27 April 1995 (hereinafter, 'the appeal'). On the same day the defendants also filed a motion in the Court of Appeal for a stay of the *ex-parte* injunction given by the High Court on 10 April 1995, pending the disposal of their appeal to the Court of Appeal.

(8) On 21 April 1995, the High Court informed the parties that the hearing fixed for 27 April 1995, had to be adjourned to 11 May 1995 because the High Courts were shifting office to another building at Denmark House, in Jalan Ampang.

(9) On 11 May 1995 the defendants' Counsel, in open Court, withdrew the defendants' application to set aside the *ex-parte* mandatory injunction granted on 10 April 1995. The learned High Court Judge allowed the withdrawal of the application with no order as to costs. An application by the defendants to strike out the plaintiffs' indorsed writ was adjourned with the consent of parties to be heard together with the striking out of the statement of claim on 22 June 1995. This was adjourned to 7 August 1995 at the request of the plaintiffs.

When the respondents' application for the stay of the *ex-parte* mandatory injunction made by the High Court on 10 April 1995, came up for hearing before the Court of Appeal on 24 July 1995, the learned Counsel for the respondents, Mr. S.C. Loh withdrew the respondents' application for the stay of *ex-parte* mandatory injunction. We asked Mr. S.C. Loh why did he withdraw the respondents' application to set aside the *ex-parte* injunction order granted on 10 April 1995. He told us it was because the *ex-parte* order had been executed and the *ex-parte* order had lapsed under the Rules of the High Court 1980, 2 weeks after the *ex-parte* order was made. We inquired whether had he not withdrawn the respondents'

application to set aside the *ex-parte* order, the learned High Court Judge could have heard it on 11 May 1995, and might have reversed his *ex-parte* injunction order and returned the parties' positions to *status quo*. Now, that the respondents had withdrawn their application to set aside the *ex-parte* order, it is deemed that the respondents **conceded** that the High Court had rightly granted the *ex-parte* order. How could the respondent then proceed with their appeal against the order of the learned High Court Judge made on 13 April 1995, adjourning the case from 13 April 1995 to 27 April 1995 since the respondent had conceded the *ex-parte* order was correctly made?. The foundation and substratum of the appeal had collapsed. As we know it a Court has power to adjourn a hearing, as is given to it under O. 35 r. 3 of the Rules of the High Court, 1980. Mr. S.C. Loh did not produce any authority to show us that a party may appeal against the order of a Judge to adjourn the hearing of any matter before him. We ourselves are not aware of any case in which an appeal had been allowed to be made against an order of adjournment for decision or further arguments of a case by even a Magistrate. If this is allowed an appeal will be filed for every adjournment made by a Magistrate, Sessions Court Judge, High Court Judge or even by Court of Appeal, and the Courts will be flooded with appeals on adjournments. The Court of Appeal in this case itself had done the same thing in this appeal. It had adjourned the hearing of the application for a fresh injunction twice, once from 24 July 1995 to 25 July 1995 and then again to 26 July 1995. Can these adjournments then be the subject of appeals to the Federal Court?. At the most, frequent adjournments of a case for no good reason may be made as one of the grounds in an appeal proper. We are doubtful if an appeal can be sustained against an order of adjournment by a Judge. We made these inquiries because we wanted to find out if there are good grounds upon which we may decide whether or not to allow the applicants' application for leave to appeal to the Federal Court from the order of the Court of Appeal granting an oral application by the respondents' learned Counsel for an interim injunction to restrain the applicants from enjoying or exercising any rights including disposing of the shares whether directly or indirectly pending the disposal of the respondents' appeal before the Court of Appeal against the decision of the learned High Court Judge made on 13 April 1995 adjourning the hearing from 13 April 1995 to 27 April 1995.

The oral application for the interim injunction by Mr. S.C. Loh on 24 July 1995 was made after he had withdrawn the motion to stay the *ex-parte* mandatory injunction before the Court of Appeal. From the judgment of the Court of Appeal a copy of which was tendered to us by Mr. S.C. Loh at the start of the hearing before us on 1 August 1995, we note that no undertaking as to damages were given to the Court of Appeal by either Mr. S.C. Loh as solicitor or by the respondent when applying for the fresh injunction. Mr. S.C. Loh told us that the shares concerned had been seized by the police for purpose of police investigation. We asked him if that fact was conveyed to the Judges of the Court of Appeal when he made the oral application before them for the interim injunction. Mr. S.C. Loh confirmed that he had done so. If that was the case where was the urgent need for the interim injunction to be issued by the Court of Appeal.

The learned Counsel for the applicant, Dato' V.K. Lingam drew our attention to s. 43 of the Court of Judicature Act, 1964 and r. 14 of the Rules of the Court of Appeal, 1994 which stated that whenever an application can be made to either the High Court or to the Court of Appeal it shall be made in the first instance to the High Court, and r. 27 of the Rules of the Court of Appeal requires that all applications to the Court of Appeal must be made by motion substantially in Form 4 of the First Schedule with affidavits filed and served on all parties and the notice of motion shall be served on the parties concerned not less than 7 days before the return day. Mr. S.C. Loh contended that the Court of Appeal was acting under

their inherent jurisdiction and under s. 44 of the Court of Judicature Act, 1964. We do not wish to deal with the merits of the intended appeal here by the applicant, but we find good reasons that s. 44 of the Court of Judicature Act 1964, does not apply here. Further, the Court of Appeal only exercises appellate jurisdiction and hear appeals from orders and judgments of the Courts below. Therefore it does not deal with original applications. We therefore allowed this application for leave to appeal by the applicants against the interim injunction ordered by the Court of Appeal on 26 July 1995, and ordered that the notice of appeal to the Federal Court be filed within two weeks from 1 August 1995.

As stated earlier, Mr. S.C. Loh had tendered to the Court and to Dato' V.K. Lingam a copy each of the judgment of the Court of Appeal dated 31 July 1995 written by N.H. Chan, JCA. This is what the judgment states in its opening paragraph:

> This is an application by the appellants to stay an *ex-parte* mandatory injunction pending appeal to the Court of Appeal.

Since the respondents (appellants in the Court of Appeal) had in the Court of Appeal withdrawn their application for stay of the mandatory injunction, there was no more application left for the Court of Appeal to deal with, and the application should have been dismissed, and the Court of Appeal was thereafter *functus officio*. We agreed that Mr. S.C. Loh did the right thing because when he withdrew in the High Court his application to set aside the mandatory injunction, it is deemed that he had conceded that the mandatory injunction had been properly made. Consequently his appeal against the learned High Court Judge's adjourning the case from 13 April 1995 to 27 April 1995 had no leg to stand on. But the Court of Appeal went on to entertain an oral application by Mr. S.C. Loh from the Bar, and to deal with the merits of the case, and granted the application. This is wholly irregular and improper. The respondents' appeal against the High Court's adjourning the hearing after hearing arguments from both parties from 13 April 1995 to 27 April 1995, was not even before the Court of Appeal, as it had not been fixed for hearing on that day.

The learned Counsel for the appellants Dato' V.K. Lingam had strongly objected to the derogatory criticism by the Court of Appeal in its written judgment and to the aspersions cast on the professional conduct of the appellants' solicitors as they were not only made without jurisdiction but are also wholly and utterly unjustified and unwarranted. He requested that all these remarks and criticism made by the three Judges of the Court of Appeal in their judgment against the High Court Judge, the applicants and their solicitors should be expunged from the judgment.

We scrutinised the record before us to see if there is any evidence which prompted the Court of Appeal Judges to make these derogatory and unwarranted remarks. We find that these remarks had been made *suo motu* without any basis. We asked Mr. S.C. Loh the learned Counsel for the respondents if he had appeared at all stages of the proceedings. He replied he did. We asked him if he had ever objected to the applicants' case being heard by the Appellate and Miscellaneous Division of the High Court. He replied he never raised any objection. We further asked him if he had ever raised any objection to the learned High Court Judge, Dato' Azmel hearing the application, and he replied he did not. We finally asked him whether, in the Court of Appeal, he ever raised any of these objections, and again he replied that he did not do so. He also admitted and confirmed that he never at any stage of the proceedings criticised the conduct of the learned solicitors for the applicants which could cause the three learned Judges of Appeal Court to attack the appellants' Counsels. Then

why should the learned Judges of the Court of Appeal go on a frolic of their own to find fault with the High Court Judge, and criticise the conduct of the applicants' solicitors in a very disparaging manner. Their own conduct would tend to show that they were themselves biased and taking the side of the respondents against the applicants, the High Court Judge and the applicants' solicitors.

It appears that the three Judges in the Court of Appeal were not happy because the case was heard by the Appellate and Miscellaneous Division of the High Court, because they felt that it ought to have been heard by the Commercial Division. As far as we are aware, the Appellate and Miscellaneous Division may hear all cases the disposal of which do not involve the calling of witnesses to give oral evidence. However, where a suit is pending in the Commercial Division the hearing of which involves the calling of witnesses for oral evidence, then any application pending the hearing, should be filed in Commercial Division. We do not find any good and sufficient reason as to why the three Judges of the Court of Appeal should launch a scathing attack on the High Court Judge for hearing the case when the learned Counsel for the respondents (defendants) in the first place had not raised any objection to the Judge or the Division proceeding with the case.

The objectionable and wholly offensive remarks made against a Court of law, the plaintiffs and their solicitors and the learned High Court Judge all of whom had had no opportunity to defend themselves in the face of such unwarranted and unjustified criticisms ought to be expunged from the judgment of the Court of Appeal as it has a tendency to bring the whole administration of law and order in the Courts into disrepute. It is judicially recognised that judicial pronouncements should be judicial in nature and not depart from sobriety, moderation, and reserve. It has been said elsewhere that the pen of a Judge should be like the knife of a surgeon which probes into the flesh only as much as is absolutely necessary for the purpose of the case before it. A Judge should neither reward virtue nor chastise vice, and his judgment should not display emotion and intemperance as displayed in the judgment of the Court of Appeal here.

In *State of Uttar Pradesh v. Mohd Naim* [1964] AIR (SC), 703 at 707 and 708, the Supreme Court of India had ordered the expunction of uncalled for strictures made by Mulla J of the Allahabad High Court against the Indian Police Force. In ordering the expunction of the remarks the Supreme Court observed:

> If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. *At the same time it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider (a)* ***whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself;*** *(b)* ***whether there is evidence on record bearing on that conduct justifying the remarks, and*** *(c)* ***whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on conduct.*** *It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. (emphasis added).*

... We do not think that in the present case we need go into the question as to the extent to which a Judge or Magistrate may draw upon his experience in assessing or weighing evidence or even in judging the conduct of a person. We recognise the existence of exceptional circumstances in a case where the Judge or Magistrate may have to draw upon his experience to determine what is the usual or normal conduct with regard to men and affairs. We say this with respect, but it appears to us that in the present case even allowing for the great experience which the learned Judge had in the matter of criminal trials his statement that "there was not a single law-less group in the whole country whose record of crime came anywhere near the record of that organised unit which is known as the Indian Police Force" was wholly unwarranted and, if we may say so, betrayed a lack of judicial approach and restraint. The learned Judge referred to no material on which this observation was based, nor did he say that his experience of criminal trials gave him an occasion to compare the records of crime of various lawless group in the State *vis-a-vis* the police force. To characterise the whole police force of the State as a lawless group is bad enough; to say that its record of crime is the highest in the State is worse and coming as it does from a Judge of the High Court, is sure to bring the whole administration of law and order into dispute. For a sweeping generalisation of such a nature, there must be a sure foundation and the necessity of the case must demand it. We can find neither in the present case. We think that the State Government was justifiably aggrieved by such a sweeping remark. Similar in nature is the remark about the stinking of "every fish in the police force barring, perhaps, a few". The word "perhaps" seems to indicate that even about a few, the learned Judge had some doubt. We consider that these sweeping generalisations defeat their own purpose. They were not necessary for the disposal of the case against Mohammad Naim.

...For the reasons given above, we have come to the conclusion, a conclusion which justice demands, that the present case is one of those exceptional cases where the inherent jurisdiction of the Court should have been exercised and the remarks earlier referred to as (a), (b) and (c) should have been expunged. We accordingly allow the appeal and direct that the aforesaid remarks do stand expunged from the order of the learned Judge dated 4 August 1961.

In *Singer Sewing Machine v. Jeremiah*, [1972] 2 MLJ, 56 at 57, the High Court found that both the conduct of the appellant company and that of their solicitors to be wholly reprehensible. On appeal the Federal Court whose decision was reported in the same law journal at page 199, held that the strictures by the High Court on the appellants and their solicitors were unwarranted, and allowed the appeal.

It is stated in *Halsbury's Laws of England* (4th Ed.) para 84 as follows:

Implicit in the concept of fair adjudication lie two cardinal principles, namely, that no man shall be Judge in his own cause (*memo judex in causa sua*) and that no man shall be condemned unheard (*audi alteram partem*). These two principles, the rules of natural justice, must be observed by Courts, tribunals, arbitrators, and all persons and bodies having the duty to act judicially, save where their application is excluded expressly or by necessary implication.

In *A.M. Mathur v. Pramod Kumar Gupta & Ors.* [1990] 2 SCC 533 B.M. Lal J of the Madya Pradesh High Court when dismissing an apparently unsustainable review petition had made certain derogatory remarks against Mr. A.M. Mahtur, a senior advocate and also the ex-Advocate General of the State. The Supreme Court held at pages 538 and 539:

Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the Court as well to other coordinate branches of the State, the

executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judge not for the judicial process.

The Judge's bench is a seat of power. Not only do Judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter of scathing criticism of Counsel, parties or witnesses. We concede that the Court had the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.

Learned Judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.

We therefore, allow the appeal and expunge all the remarks made by B M Lal, J against the appellant in the impunged order.

Bhagwati CJ in *State of M.P. & Ors. v. Nandlal & Ors.,* [1986] 4 SCC 566, at 615 in expressing his strong disapproval of the strictures made by the Judge, stated:

We may observe in conclusion that Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B M Lal, J were totally unjustified and unwarranted and they ought not to have been made.

We therefore would like to remind Judges that they should refrain from criticising another Court, their brother Judges and lawyers who have no opportunity to correct such injustice caused to them which will have detrimental effect on their characters and professional careers especially in cases like this where there is no evidence or cause to warrant their criticism, and where the Judges of the Court of Appeal have no jurisdiction to hear an oral application when the motion for stay had been withdrawn. They must remember that they are themselves not infallible and should not use the Bench as a forum to pass harsh and disparaging strictures on others. Such conduct may be seen as being malicious, mischievous and irresponsible, and will bring the administration of justice into disrepute. Judges and Magistrates must not only act neutral and fair but be seen to act so. They should not jump into the arena and do battle with the parties lest they may be blinded by the dust of the battle.

Cases need not be multiplied on this cardinal point. However, to highlight this vital principle, we would refer to *V. Sujatha v. State of Kerala* [1994] Supp. (3) SCC 437 at 448, where the Indian Supreme Court held:

Therefore one of the main principles is that a Judge should take special care in making disparaging remarks against a Judge of a subordinate Court or against a person or authority whose conduct comes in for consideration before him in cases to be decided by him. Making uncalled for remarks against the said persons or authorities would be violation of judicial discipline.

We would therefore expunge the following remarks from the judgment of the Court of Appeal:

> ...But this case is more than that. This is a case about an injustice which has been perpetrated, by a Court of law. This is also a case about abuse of the process of the High Court and, therefore, it concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure and in which the Court has a duty to exercise this salutary power.
>
> Although the *ex-parte* mandatory injunction should not have been granted in the circumstances of this case in the first place, that is not the injustice which is revealed in this case. The injustice is manifest: it is to be seen in the form in which the order is framed, the terms of which pre-empt the defendants from exercising their right to apply to discharge an *ex-parte* injunction obtained behind the backs of the defendants. Here, the plaintiffs through their legal advisers have abused the process of the High Court by instigating the injustice through misuse of the Court's procedure by manipulating it in such a way that it becomes manifestly unfair to the defendants. By doing what they did, these unethical lawyers have brought the administration of justice into disrepute among right-thinking people.
>
> We do not think we can do better with this censure than to voice and emphasise the opening words of Lord Diplock in his judgment in the House of Lords in *Hunter v. Chief Constable* [1982] AC 529, at 536:
>
> > My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the Court has a duty (I disavow the word discretion) to exercise this salutory power.
> >
> > The fact that the proceedings were filed in the wrong Division does not render the proceedings to be in any way invalid but may, coupled with other considerations in the present case, give the impression to right thinking people that litigants can choose the Judge before whom they wish to appear for their case to be adjudicated upon. This, we consider, may lead to very unhealthy negative thinking and since justice must not only be done but must also be seen to be done it is imperative for the trial Judge, upon perusal of the pleadings, to have taken the initiative of transferring the proceedings to the right Division so as to dispel any notion that he is partial to any party.

In expunging these totally unwarranted and unjustified remarks from the judgment of the Court of Appeal written on 31 July 1995, we must place on record of our disappointment and displeasure (to put it mildly) at the conduct of the three Judges of the Court of Appeal for having without any justification criticised those who were not given the opportunity to defend or explain themselves.

We wish to remind Judges and Magistrates that where they find that an advocate handling any matter before them has grossly abused the process of Court or acted in a highly unethical manner, the proper step to be taken is for them to lodge a report with the Legal Profession Disciplinary Board established under s. 99(2) of the Legal Profession Act 1976 which will investigate the complaint and where both the accuser and the accused will be given a fair opportunity to state their cases.